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# State v. Bates Appellant's Brief Dckt. 40082

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                                |
|-----------------------|---|--------------------------------|
| STATE OF IDAHO,       | ) |                                |
|                       | ) | NO. 40082                      |
| Plaintiff-Respondent, | ) |                                |
|                       | ) | BENEWAH COUNTY NO. CR 2011-815 |
| v.                    | ) |                                |
|                       | ) |                                |
| MELISA RENEE BATES,   | ) | APPELLANT'S BRIEF              |
|                       | ) |                                |
| Defendant-Appellant.  | ) |                                |

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**BRIEF OF APPELLANT**

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APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BENEWAH

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HONORABLE FRED GIBLER  
District Judge

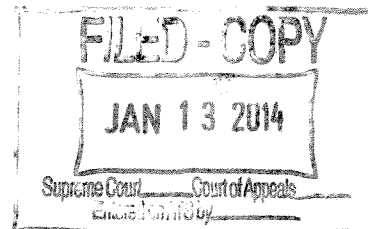
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## STATEMENT OF THE CASE

### Nature of the Case

Ms. Bates timely appeals from the district court's judgment of conviction. On appeal, she argues that the district court erred when it failed inquire into Ms. Bates' request for substitute counsel. She also argues that the district court abused its discretion when it denied her motion to withdraw her guilty plea and that her sentence is excessively harsh.

### Statement of the Facts and Course of Proceedings

Police responded to a call reporting a missing person, Robert Marek. (Presentence Investigation Report (*hereinafter*, PSI), p.2.) When they arrived at Mr. Marek's home, they noticed a fire in a fire pit in the back yard and what appeared to be human body parts located in and around the fire. (PSI, p.2.) The police received information indicating that Ms. Bates was Mr. Marek's niece and that she had recently been staying at his home. (PSI, p.2.) An autopsy confirmed that there were human remains around the fire, which belonged to Mr. Marek. (PSI, p.2.) Ms. Bates was interrogated by the police and admitted that she had killed Mr. Marek. (PSI, p.2.)

Ms. Bates was charged, by information, with first degree murder. (R., pp.28-29.) Pursuant to a plea agreement, the State filed an amended information alleging second degree murder and, in return, Ms. Bates entered an *Alford*<sup>1</sup> plea to second degree murder. (R., pp.88-91.) Thereafter, the district court imposed a unified life sentence, with thirty years fixed. (R., pp.102-103.) Ms. Bates timely appealed. (R., pp.108-110.)

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<sup>1</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

Ms. Bates filed an Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion requesting leniency, which was denied by the district court.<sup>2</sup> While her appeal was pending, Ms. Bates also filed a motion to withdraw her guilty plea and requested the appointment of new counsel, both of which were denied by the district court.<sup>3</sup>

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<sup>2</sup> The materials related to the Rule 35 motion are located in the July 13, 2013 Motion to Augment and Suspend the Briefing Schedule and Statement in Support Thereof.

<sup>3</sup> The materials related to the motion to withdraw Ms. Bates' guilty plea are located in the July 13, 2013 Motion to Augment and Suspend the Briefing Schedule and Statement in Support Thereof.

### ISSUES

1. Did the district court err when it denied Ms. Bates' motion for the appointment of new counsel to represent her in regard to her motion to withdraw her guilty plea?
2. Did the district court abuse its discretion when it denied Ms. Bates' motion to withdraw her guilty plea?
3. Did the district court abuse its discretion when it imposed a unified life sentence, with thirty years fixed, upon Ms. Bates following her plea of guilty to second degree murder?
4. Did the district court abuse its discretion when it denied Ms. Bates' Rule 35 motion requesting leniency?



## ARGUMENT

### I.

#### The District Court Erred When It Denied Ms. Bates' Motion For The Appointment Of New Counsel To Represent Her In Regard To Her Motion To Withdraw Her Guilty Plea

##### A. Standard Of Review

The determination of whether a court conducted an adequate inquiry into why substitute counsel should have been appointed and whether a person wishes to reject the court appointed counsel and self-represent is reviewed *de novo*. See *State v. Peck*, 130 Idaho 711 (Ct. App. 1997).

##### B. The District Court Inadequately Inquired Into Ms. Bates' Request For Substitute Counsel

Idaho Code Section 19-852 provides criminal defendants a statutory right to counsel. I.C. § 19-852. The Idaho Supreme Court has held that a statutory right to counsel carries with it the correlative right to the effective assistance of counsel. *State v. Hall*, \_\_\_ P.3d \_\_\_, 2013 WL 6225673, at \*4 (2013);<sup>4</sup> see also *Hernandez v. State*, 127 Idaho 685, 687 (1995) (“We can see no legitimate basis for determining whether there has been a violation of the right to effective of counsel guaranteed by I.C. § 19–852 differently from determining whether there has been a violation of a similar constitutional right.”). “The Sixth Amendment to the United States Constitution and Article I, Section 13 of the Idaho Constitution guarantee the right to counsel.” *State v. Lippert*, 145 Idaho 586, 594 (Ct. App. 2007).

“It is well settled that an indigent's right to court-appointed counsel includes the right to effective assistance of counsel, but it does not necessarily include the right to an

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<sup>4</sup> The *Hall* Opinion analyzed the right to conflict free counsel in post-conviction proceedings after the imposition of the death penalty.

attorney of one's own choice.” *State v. Priest*, 128 Idaho 6, 11 (Ct. App. 1995). While a criminal defendant does not have the right to counsel of her choice, “for ‘good cause’ a trial court may, in its discretion, appoint a substitute attorney for an indigent defendant.” *Lippert*, 145 Idaho at 594. “An accused also has the right to waive court-appointed counsel and to conduct his or her own defense.” *Id.* “A defendant is not required to show good cause for the desire to exercise that right.” *Id.* “The trial court must afford the defendant a *full and fair opportunity* to present the facts and reasons in support of a motion for substitution of counsel after having been made aware of the problems involved.” *Id.* (emphasis in original). This inquiry must occur even if the district court has “well-founded suspicions of intentional delay and manipulative tactics,” there can be “no substitute for the inquires necessary to protect a defendant’s constitutional rights.” *Peck*, 130 Idaho at 714.

While a district court must afford a defendant a full and fair opportunity to present facts to support the request for the appointment of counsel, the duty to inquire does not impose an onerous burden on the court. For example, the Idaho Supreme Court found that this duty to inquire was satisfied when the trial court asked the defendant to make any statements he desired in support of his motion for substitute counsel. *State v. Clayton*, 100 Idaho 896, 898 (1980). Conversely, in *Peck*, *supra*, this duty to inquire was not satisfied when the Mr. Peck was not allowed to address the court concerning his desire for substitute trial counsel. *Peck* 130 Idaho at 713-14. In coming to that conclusion, the Idaho Court of Appeals reasoned as follows:

As [Mr. Peck] points out, this Court cannot discern whether he had legitimate grounds for his request for new counsel, such as an actual conflict of interest or a deficiency in the public defenders’ performance. Nor can we ascertain from the record whether Peck wished to represent himself, as was his right, in preference to continuing with representation

by the appointed counsel. The record reveals no reason for summarily rejecting [Mr. Peck's] request, as the district court appears to have done.

*Id.* at 714. As stated above, this duty imposes a minimal burden on a district court. Once a defendant has requested the appointment of substitute counsel, the district court must provide a defendant the opportunity to explain the reasons for the request, even if the district court has “well founded suspicions” that the request is merely a means to manipulate the court. *Id.*

In this case, the district court failed to provide Ms. Bates the opportunity to explain why she was requesting substitute counsel. Ms. Bates was represented by the same defense attorney at the change of plea hearing, sentencing hearing, the Rule 35 hearing, and the hearing on the motion to withdraw her guilty plea. (R., pp.88-89, 99-101; Minutes of the Rule 35 hearing held on December 14, 2012 (Augmentation); 05/17/13 Tr., p.3.) In Ms. Bates’ affidavit in support of her motion to withdraw her guilty plea, she wrote the following:

I was persistently forced in to signing I was tricked by only reading last page last signing after just haven [sic] read a continue 2 second x second day of meeting, for a more time to come up with money for trial

Not properly investigated knowledge with held knowledge of others confession and explanasion [sic] the cover up

Motion of new counsel

(Motion to Withdraw Guilty Plea Pursuant to Idaho Criminal Rule 33(c) (Augmentation), p.1.) Ms. Bates recognizes that the foregoing statements are somewhat unclear. However, when the phrase “Motion of new counsel” is read in conjunction with the preceding two paragraphs, it indicates that she wants a substitution of trial counsel because she was tricked into agreeing to plead guilty and that there was a cover-up and another person confessed to the killing. From this record, one cannot tell to a

degree of reasonable certainty whether Ms. Bates wanted a substitute attorney or wanted to represent herself *pro se*. In light of the clear standards set forth by the Idaho Supreme Court and the Court of Appeals, the district court should have, at a minimum, ordered Ms. Bates to appear telephonically at the hearing on the motion to withdraw her guilty plea and ask her why she wanted the appointment of substitute counsel.

Additionally, if this matter is remanded on the foregoing basis, and the district court appoints substitute counsel, Ms. Bates is also entitled to another hearing on her Rule 35 motion as Ms. Bates' request for substitute counsel, which was lodged with the district court on October 22, 2012, preceded the December 14, 2012, hearing on Ms. Bates' Rule 35 motion. (Motion to Withdraw Guilty Plea Pursuant to I.C.R. 33(c) (Augmentation); Minutes of the Rule 35 hearing held on December 14, 2012 (Augmentation).)

In sum, this case must be remanded to afford Ms. Bates the opportunity to explain why she requested the appointment of substitute counsel.

## II.

### The District Court Abused Its Discretion When It Denied Ms. Bates' Motion To Withdraw Her Guilty Plea

#### A. Standard Of Review

Appellate review of the denial of a motion to withdraw a plea is limited to determining whether the district court exercised sound judicial discretion as distinguished from arbitrary action. *State v. Freeman*, 110 Idaho 117, 121 (Ct. App. 1986). "When an exercise of discretion is reviewed on appeal, the appellate court conducts a multi-tiered inquiry. The sequence of the inquiry is: (1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within

the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason.” *State v. Hedger*, 115 Idaho 598, 600 (1989) (quoting *Associates Northwest, Inc. v. Beets*, 112 Idaho 603, 605 (Ct. App.1987)).

B. The District Court Abused Its Discretion When It Denied Ms. Bates’ Motion To Withdraw Her Guilty Plea

Motions for withdrawal of pleas are governed by I.C.R. 33(c). Whether to grant a motion to withdraw a guilty plea lies in the discretion of the district court and such discretion should be liberally applied. *Freeman*, 110 Idaho at 121. After a defendant has been sentenced, a motion to withdraw a guilty plea generally will be granted only to correct manifest injustice. Idaho Criminal Rule 33(c); *State v. Huffman*, 137 Idaho 886, 887 (Ct. App. 2002); *State v. McFarland*, 130 Idaho 358, 361 (Ct. App. 1997). It is the defendant’s burden to show that a manifest injustice would result if the motion to withdraw the guilty plea were denied. *State v. Gomez*, 124 Idaho 177, 178 (Ct. App. 1993). Manifest injustice will be found if the plea was not taken in compliance with constitutional due process standards, which require that a guilty plea be entered voluntarily, knowingly, and intelligently. *Huffman*, 137 Idaho at 887; *Boykin v. Alabama*, 395 U.S. 238, 242 (1969).

Ms. Bates can establish that the denial of her motion to withdraw her guilty resulted in a manifest injustice as her plea was not knowing and intelligent. In reliance on I.C.R. 11, the Idaho Court of Appeals has held that in order for a guilty plea to be knowing and intelligent the defendant must be advised of all the direct consequences resulting from the entry of the plea, which includes the minimum and maximum punishments. *State v. Way*, 117 Idaho 594, 597 (Ct. App. 1990). According to trial

counsel, Ms. Bates was not informed at the change of plea hearing that second degree murder has a minimum sentence of ten years. (04/12/13 Tr., p.11, L.19 - p. 12, L.3; 05/17/13 Tr., p.5, Ls.13-21.) As such, her guilty plea was not entered knowingly and intelligently.

Ms. Bates also argues that her guilty plea was not voluntary as it was the product of coercion and fraud. "A plea of guilty is deemed coerced only where it is improperly induced by ignorance, fear or fraud." *State v. Hanslovan*, 147 Idaho 530, 537 (Ct. App. 2008). In this case, Ms. Bates asserted that she was forced into signing the plea agreement because the district court would not grant a continuance to afford her more time to come up with money for trial. (Motion to Withdraw Guilty Plea Pursuant to Idaho Criminal Rule 33(c), Augmentation, p.1.) Ms. Bates also asserted that she was "tricked" into signing the plea agreement and was only shown the last page of the agreement. (Motion to Withdraw Guilty Plea Pursuant to Idaho Criminal Rule 33(c), Augmentation, p.1.) While no more elaboration was provided to support these claims, it does appear from Ms. Bates' affidavit that she was coerced to enter her guilty plea due to financial pressures and that her guilty plea was obtained by fraud.

Additionally, Ms. Bates' guilty plea was not knowing, intelligent, and voluntary as she asserted the existence of a *Brady*<sup>5</sup> violation. The Idaho Court of Appeals has held that the constitutional validity of a guilty plea can be undermined in the event the State fails to disclose both exculpatory and material evidence prior to the entry of the plea. *State v. Gardner*, 126 Idaho 428 (Ct. App. 1994). Before establishing that the undisclosed evidence is both exculpatory and material, the "*Brady* violation should be evaluated in light of all the attendant circumstances, including the following three

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<sup>5</sup> See *Brady v. Maryland*, 373 U.S. 83 (1963),

factors: (1) whether the plea was entered with advice of counsel, (2) whether the plea-taking procedure complied with *Boykin v. Alabama*,<sup>6</sup> and (3) whether a factual basis was established for the plea, i.e., whether the defendant's admissions fully establish his factual guilt." *Id.* at 434-435. In this case, Ms. Bates does not challenge the fact that her guilty plea was entered with the advice of counsel. However and as argued above, she does argue that the guilty plea colloquy was inadequate as she was not informed about that she was pleading guilty to an offense with a ten year minimum sentence. (04/12/13 Tr., p.11, L.19 - p. 12, L.3; 05/17/13 Tr., p.5, Ls.13-21.)

Ms. Bates also challenges the factual basis for her offense. In *Gardner, supra*, the defendant did not challenge that his plea was either un-counseled or that the plea colloquy was constitutionally infirm. *Id.* at 435. The Court of Appeals held that the defendant could challenge the validity of his guilty plea based on the *Brady* violation because he did not provide a factual basis for all of the elements for the offense to which he pleaded guilty. *Id.* In this case, Ms. Bates entered an *Alford* plea and, as such, did not provide a factual basis for her offense. (R., pp.88-89.) In fact, Ms. Bates asserted her innocence throughout the change of plea hearing and only pleaded guilty because "I don't agree with the evidence that's been put forth. Do I agree? I agree that yes, there could always be evidence that the State could put forth to convict any one person." (04/04/12 Tr., p.17, Ls.16-19.) After she made that statement, she reiterated, "I know I can go down for this, but I did not kill Robert Marek. I did not kill Uncle Bob." (04/04/12 Tr., p.18, Ls.21-22.) Since an *Alford* plea was entered in this case and since Ms. Bates maintained her innocence, she did not provide a factual basis for the offense,

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<sup>6</sup> See *Boykin* (requiring an affirmative showing on the record that the guilty plea was knowing, intelligent, and voluntary).

and the alleged *Brady* violation can be the basis to undermine the district court's conclusion that her guilty plea was entered knowingly, intelligently, and voluntarily.

Since Ms. Bates has established that she did not provide a factual basis for her guilty plea she must establish that the undisclosed evidence is both exculpatory and material in order to establish manifest injustice. *Gardner*, 126 Idaho at 436. In her motion to withdraw her guilty plea, Ms. Bates stated that there was no proper investigation in this matter and that information pertaining to a third party's confession was withheld from her as part of a "cover up." (Motion to Withdraw Guilty Plea Pursuant to Idaho Criminal Rule 33(c), Augmentation, p.1.) If a third party had confessed to the killing of Mr. Marek and information about an intentional "cover up" of this confession is clearly exculpatory and material as it indicates that a person other than Ms. Bates is guilty. Therefore, the district court erred when it denied Ms. Bates' motion to withdraw her guilty plea as the *Brady* violation undermined the constitutional validity of her plea and the district court's denial of her motion constituted a manifest injustice.

In sum, Ms. Bates' guilty plea was not knowing, intelligent, and voluntary as she was not informed about the ten year mandatory sentence, was tricked into signing her plea agreement, and argued a *Brady* violation.

### III.

#### The District Court Abused Its Discretion When It Imposed A Unified Life Sentence, With Thirty Years Fixed, Upon Ms. Bates Following Her Plea Of Guilty To Second Degree Murder

Ms. Bates asserts that, given any view of the facts, her unified life sentence, with thirty years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the



character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Ms. Bates does not allege that her sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Ms. Bates must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.*

Ms. Bates suffers from severe mental health issues. These issues are so severe that they dominated the sentencing hearing. (See generally 05/24/12 Tr.) In fact, both the State and the district court agreed that specific deterrence is not an issue in this case because Ms. Bates cannot comprehend the true nature of her actions. (05/24/12 Tr., p.62, L.13 - p.63, L.2, p.76, Ls.13-19.) The district court also concluded, based on the implicit premise that it is futile to punish a person that does not comprehend her actions, that retribution is not much of a factor in this case. (05/24/12 Tr., p.76, L.11-21.) As such, the only truly relevant sentencing factors in this case are rehabilitation and the protection of society. With that in mind, the district court concluded that Ms. Bates was amenable to mental health rehabilitation if she receives prolonged and intense therapy. (05/24/12 Tr., p.76, L.22 - p.77, L.4.) As such, Ms. Bates argues that thirty years fixed is excessive, and that the fixed portion of her sentence should be in

the range of ten to fifteen years. Such a sentence would provide her with the prolonged access to intense therapy identified by the district court, which would promote both rehabilitation and protection of society. If she is stabilized, reducing the fixed portion of her sentence would enable her to get reintegrated into the community while she still has a significant portion of her life ahead of her.

Additionally, there are various mitigating factors present in this matter which support the conclusion that Ms. Bates' sentence is excessively harsh. As mentioned above, the most significant mitigating factor in this case is Ms. Bates' mental health. As a child, Ms. Bates received a head injury which inhibits her ability to read and write. (PSI, p.8.) Despite this injury, Ms. Bates' aunt, Deanne Turcott, testified at sentencing, that Ms. Bates was a normal child. (05/24/12 Tr., p.31, L.24 - p.32, L.12.) Ms. Turcott went on to state that when Ms. Bates was between twelve and thirteen years old, she began to change. (05/24/12 Tr., p.32, Ls.13-14.) Ms. Turcott described the change in Ms. Bates as follows:

[S]he started to kind of disconnect with the world and reality. She got caught up in some drugs, started to get into trouble with the law.

. . . .

She lived with me and my husband for about six months when she was around 15. And her mind got so focused on the fact that everyone was either physically or sexually or emotionally abusing her that it kind of became unsafe for her to be with us any longer. She started to believe that people were abusing her and making accusations. And the neighbor kids came to me and said, "She's -- she's got some . . . illusions here. She's starting to think that you guys are all abusing her."

(05/24/12 Tr., p.32, L.13 - p.33, L.5.) Ms. Turcott then expressed her sorrow for the loss of Mr. Marek. (05/24/12 Tr., p.34, L.19 - p.35, L.3.) She said he was a caring man with a big heart and a gentle soul. (05/24/12 Tr., p.34, L.19 - p.35, L.3.) She then went on to state the following:

I'm just asking the Court to recognize that Melisa's broke [sic]. Something inside her snapped . . . a long time ago. And even though my brother and sister did everything they could do to get her help -- and I believe they did -- there wasn't really a lot of help to get. And in Idaho there really continues not to be a lot of help to get.

. . . .

I am afraid for Melisa, and despite all the psychological evals that [say] she is normal and able to stand trial, I don't think she really understands or ever was able to stand trial. I don't believe it, and I don't think anybody in here does either.

. . . .

I hope [someday] there will be a real diagnosis for Melisa, something that they can treat, something that can help her, fix whatever got broke [sic] all those years ago. [I] [h]ope that she'll understand the extent of what happened and to live as a normal person someday.

(05/24/12 Tr., p.35, L.4 - p.36, L.18.)

Ms. Turcott's concerns over Ms. Bates' paranoid delusions about Ms. Bates' sexual and physical victimization are consistent with version of events contained in the police report documenting the interrogation of Ms. Bates. In that report, Officer Berger wrote that Mr. Marek had told a friend that he was concerned about Ms. Bates as she had accused him of wanting to have sex with her. (Police Report written by Officer Berger, attached to PSI, p.3.) During the interrogation of Ms. Bates she cryptically mentioned self defense, Mr. Marek, and incest. (Police Report written by Officer Berger, attached to PSI, p.5.)

Ms. Bates' trial counsel reaffirmed Ms. Turcott's statement that Ms. Bates was a normal child until she entered her early teenage years. (05/24/12 Tr., p.63, L.9 - p.64, L.6.) According to trial counsel, Ms. Bates disappeared for a few days and might have ingested a drug or toxin that caused her mental health issues. (05/24/12 Tr., p.64, Ls.4-14.) Trial counsel indicated that her diagnoses were not consistent and they have

included borderline personality disorder, antisocial disorder, drug and alcohol dependence, depression, mental illness, post-traumatic stress disorder, bipolar disorder, brain injury, cognitive disjunction, and dual personality disorder. (05/24/12 Tr., p.64, L.24 - p.65, L.17.) Counsel went on to state that it's "almost like we get a dart and throw it at the wall and that's her diagnosis." (05/24/12 Tr., p.65, Ls.12-16.) For example, Dr. Barkley diagnosed Ms. Bates with Chronic Undifferentiated Schizophrenia in 2004, and in 2012 Dr. Hayes did not determine she was schizophrenic; instead, Dr. Hayes diagnosed her as having Major Depressive Disorder and Borderline Personality Disorder. (Mental Health Report written by Dr. Hayes, dated May 20, 2012 (Augmentation), pp.7, 9-11.)

Ms. Bates was also involuntarily committed in her early twenties. When she was twenty one years old, she was charged with writing a check with insufficient funds and was deemed incompetent to go forward with her defense. (Mitigation Report Vol. I (Augmentation), p.312.) As a result, she was involuntarily committed to the State Hospital North. (Mitigation Report Vol. I (Augmentation), p.312.) The doctor who found her incompetent stated that she was profoundly impaired and could barely communicate. (Mitigation Report Vol. I (Augmentation), p.312.) Ms. Bates was stabilized and discharged from the facility approximately six months after her admission. (Mitigation Report Vol. I (Augmentation), pp.313-316.) This evinces that Ms. Bates is amenable to mental health treatment.

Additionally, Ms. Bates' substance addiction is a mitigating factor. Ms. Bates was exposed to alcohol when she was a toddler and used "sippie cups" to consume the alcohol. (PSI, p.9.) Ms. Bates' use of alcohol and other substances persisted throughout her childhood and teenage years. (Mitigation Report Vol. I (Augmentation),

pp.255-256, 359.)<sup>7</sup> When Ms. Bates was fourteen years old, one evaluator concluded that alcohol and substance abuse were considerable problems for Ms. Bates. (Mitigation Report Vol. I (Augmentation), pp.256.) Ms Bates was in a “drug juvenile detention” facility when she was sixteen. (Mitigation Report Vol. I (Augmentation), p.412.)

Ms. Bates was also the victim of abuse as a child. It was so bad that she was placed into foster care at the age of twelve. (Mitigation Report Vol. I (Augmentation), pp.348-349, 412.) One of Ms. Bates’ neighbors reported an incident in which her father was sitting on her while “shoving rocks down her throat.” (Mitigation Report Vol. II (Augmentation), p.192.) Ms. Bates stated that she had been raped by a twenty three year old when she was eleven years old, became pregnant, and then miscarried. (Mental Health Report written by Dr. Hayes, dated May 20, 2012 (Augmentation), p.4.)

Despite the foregoing setbacks, Ms. Bates is hardworking and sacrificed years of her life to help others. One of her friends, Scott Taylor, had a mother that needed twenty-four hour care because she was an Alzheimer’s patient. (05/24/2012 Tr., p.43, L.2 - p.44, L.17.) Ms. Bates lived with Mr. Taylor for approximately three and one-half years. (05/24/12 Tr., p.45, Ls.5-11. p.47, L.13 - p.49, L.17.) During that time, Ms. Bates played an indispensable role changing bed sheets and washing clothes. (05/24/12 Tr., p.44, Ls.20-25.) She also bathed and fed Mr. Taylor’s mother. (05/24/12 Tr., p.23-24.) According to Mr. Taylor, “I personally don’t believe that Melisa was capable of these atrocities. I don’t know. And no matter where or what happens from here, I would like to see that Melisa got help to take care of whatever her problems are.”

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<sup>7</sup> For ease of citation the pages in the Mitigation Report have been numbered sequentially.

(05/24/12 Tr., p.46, Ls.13-17.) On this note, M's. Bates' trial counsel stated that in her support letters she was considered by others as loving, happy, pleasant, respectful, trustworthy, grateful, helpful, caring, friendly, patient, busy, and selfless. (05/24/12 Tr., p.65, Ls.67-24.)

Ms. Bates also has support and is trusted by other people in the community. For example, William Sexton wrote a letter to the court which stated that she is hard-working, and that he trusted her with the key to his home. (Letter written by William Sexton (augmentation).) Patti Naccarato wrote the court a letter indicating that she is "eternally grateful" to Ms. Bates for saving Ms. Naccarato's husband's life. (Letter written by Patti R. Naccarato (Augmentation).) Ms. Naccarato also stated that she never had any reason to mistrust Ms. Bates. (Letter written by Patti R. Naccarato (Augmentation).) Mr. Naccarato also wrote a letter expressing sentiments similar to his wife's. (Letter written by Roland Naccarato (Augmentation).) These are just a few examples of the positive support letters Ms. Bates received, the majority of which depict her as a caring and hardworking person that is trusted in the community. (Letters written by Robert and Linda Carroll, Gordon Nyberg, James B. Keirklie, Jacque Knowles, and Mary Kuhfuss (Augmentation).)

There was one letter which indicated that Ms. Bates had verbally accosted a couple and they were scared of Ms. Bates. (Letter written by Randy and Vicki Rowe (Augmentation).) Shad Panter wrote a support letter indicating that some of the Rowes' opinions of Ms. Bates should be discredited. (Letter written by Shad Panter (Augmentation).) Mr. Panter wrote the following about the Rowes:

I have heard that Randy and [Vickie] Rowe . . . have written [a] very disparaging [letter] about [Ms. Bates] and I would disagree with them on this as it seems to me they are the worst culprits of harassing her to play to her weaknesses to get a rise out of her. And I do not like bullies. As far

[as] the police getting a confession out of her it's bogus with her diagnosed mental state you push hard and long enough she'll break and give anything you want to escape adversity. Which they may not have known at the time but to [punish her further] and keep her away from friends is unnecessary and fruitless and a waste of taxes . . . .

(Letter written by Shad Panter (Augmentation).) As such, Ms. Bates can function in the community and many people trust and care for her.

In sum, Ms. Bates suffers from severe mental health issues, which inhibit her ability to understand the underlying offense. However, she is amenable to mental health treatment and when she is stabilized she is considered by the community as a hardworking and caring person. As such, the district court abused its discretion by imposing an excessively harsh sentence.

#### IV.

##### The District Court Abused Its Discretion When It Denied Ms. Bates' Rule 35 Motion Requesting Leniency

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* "If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction. *Id.*

Ms. Bates provided new information in support of her Rule 35 motion. After Ms. Bates was sentenced she completed the "Living with Mental Illness Class." (Supplemental Motion to Reduce Sentence (Augmentation), p.2.) Ms. Bates is also "a


Janitor of Unit 3 where she sweeps, mops and cleans rooms. She also mows yards. Ms. Bates is allowed to wear regular jeans and shirts. She earns \$0.30 per hour.” (Supplemental Motion to Reduce Sentence (Augmentation), p.2.) Ms. Bates has not been a problem in that facility. (Supplemental Motion to Reduce Sentence (Augmentation), p.2.)

In sum, the district court abused its discretion when it denied her Rule 35 motion requesting leniency as Ms. Bates new information indicated that she was making rehabilitative progress after she was sentenced in this matter.

#### CONCLUSION

Ms. Bates respectfully requests that this Court remand this matter with instructions for the district court to inquire into Ms. Bates’ request for substitute counsel. Ms. Bates also requests that this Court remand this matter with instructions to allow Ms. Bates to withdraw her guilty plea. Alternatively, Ms. Bates requests that this Court reduce the fixed portion of her sentence from thirty years to either ten or fifteen years.

DATED this 13<sup>th</sup> day of January, 2014.



SHAWN F. WILKERSON  
Deputy State Appellate Public Defender




CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13<sup>th</sup> day of January, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

MELISA RENEE BATES  
INMATE #104255  
PWCC  
1451 FORE ROAD  
POCATELLO ID 83205

FRED GIBLER  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
PO BOX 83720  
BOISE ID 83720-0010  
Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH  
Administrative Assistant

SFW/eas